IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1911 OF 1992

Ashok Baburao Basankar .. Petitioner

versus

Mahadev Laxman Bhuyal .. Respondent

...

Mr.R.A. Karale i/b P.K. Dhakephalkar for the petitioner.

Ms.A.R.S. Baxi for the respondent.

CORAM : D.G. KARNIK, J

DATED : 25th August 2004.

P.C:-

1. By this petition, the petitioner tenant challenges the judgement and order dated 28th January 1992 passed by the learned IXth Addl. District Judge, Thane allowing landlord's appeal bearing Civil Appeal No.176 of 1988 and thereby remanding the suit back to the trial Court for trial

in accordance with law.

The facts relevant for the purpose of decision of the Writ Petition are stated below:

2. The respondent is the owner of a Chawl (building) known as Bhuyal's Chawl situated at Chirag Nagar, Thane. The petitioner is a tenant occupying one room admeasuring about 10' x 10' therein. The chawl is situated on the land bearing Survey No.502A, Panchapakhadi, Chirag Nagar. The respondent filed a suit bearing regular Civil Suit no.149 of 1986 for eviction of the petitioner. The petitioner contended that the entire survey no.502-A of Panchpakhadi wherein the suit premises is situated has been declared as a slum and the suit which has been filed without obtaining the prior permission of the competent authority was not maintainable in view of Section 22 of the Maharashtra Slum Areas (Improvement Clearance and Redevelopment) Act, 1971, {hereinafter referred to as the 'Slum Act}.

3. The trial Court framed a preliminary issue as to whether it had a jurisdiction to entertain and

try the suit in view of the Slum Act. The trial Court held that the suit property was declared as Slum and as no permission of the competent authority was obtained, it had no jurisdiction to entertain the suit. The trial Court accordingly dismissed the suit. On appeal (Appeal No.176 of 1988) filed by the respondent, the appellate Court held that the suit property was not declared as a slum and therefore, the suit was maintainable. It accordingly allowed the appeal and remanded the matter back to the trial Court for hearing the suit on merits. That judgement is impugned in this Writ Petition.

4. The learned counsel for the petitioner submits that the suit property has been declared as a Slum by a notification published at page no.83 in the Maharashtra Government Gazette dated 5th October 1978, a copy of which is filed at Exhibit-23 in the trial Court. The perusal of the notification shows that it is not a notification issued under section 4 or any of the provisions of the Slum Act. It is a notification issued purportingly under section 2 of the Maharashtra Vacant Lands Act (Prohibition of Unauthorised Occupation and Summary Eviction) Act

1978 (Maharashtra Act no.XVI of 1975) (for short 'Maharashtra Vacant Lands Act') In my view, the said notification does not prohibit the respondent - plaintiff for filing of a suit nor mandate a permission of the Competent Authority to be obtained under the Slum Act for the reasons mentioned below.

5. Section 22 of the Slum Act provides that no person shall file a suit for possession of any building or land in a slum area except with a prior permission in writing of the Competent Authority. The prohibition for filing of a suit without the prior written permission of the Competent Authority applies only for a suit for possession of a land or building situated in a slum area. Slum area has been defined under section 2(ga) of the Slum Act to mean an area declared as Slum by the Competent Authority under sub section (1) of Section 4. Sub section (1) of section 4 of the Slum Act provides that where the Competent Authority is satisfied that any area may be a source of danger to health, safety or convenience of public of that area or its neighbourhood, by reason of the area having inadequate or no basic amenities or being insanitary, over-crowded or otherwise, or any

building in any area used or intended to be used for habitation is unfit for human habitation or on account of some factors it is detrimental to the health, safety or convenience of the public of that area, the Competent Authority may by notification in the Official Gazette, declare such area to be a Slum area. Thus, for an area to be called as slum area, it must be declared as Slum area by issuance of notification by the Competent Authority under section 4(1) of the Slum Act. No notification issued under section 4(1) of the Slum Act is produced on record. The notification on which reliance is placed is only issued under section 2 of the Maharashtra Vacant Lands Act.

6. The learned counsel for the petitioner contends that a certificate has been issued by the Tahsildar on 22nd August 1988 which states that the Chirag Nagar area has been declared as Slum area. An area would not become a slum area by reason of a certificate being issued by the Tahsildar or any other Officer howsoever high, of the Government. An area would be a slum area only if it is declared as a slum by a notification issued by the Competent Authority under section 4(1) of the Slum Act. As no

notification is shown to have been issued under section 4(1) of the Slum Act, the suit property cannot be regarded as a Slum area or situated in a slum area. Consequently, the provisions of Section 22 of the Slum Act are not applicable to the suit property and suit can be proceeded with without prior permission of the Competent Authority in writing.

7. Hence, judgement of the trial Court was clearly erroneous and has rightly been set aside by the appellate Court. There is no merit in the petition which is hereby dismissed with costs.

Rule discharged with costs.

D.G. KARNIK, J